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SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 266th MEETING

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Chairman: Mr. DIPANDA MOUELLE

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.266/Add.1.

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The meeting was called to order at 10.35 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Initial report of the Republic of Korea (CAT/C/32/Add.1)

1. At the invitation of the Chairman, Mr. HWANG, Mr. CHO, Mr. YUH, Mr. KWON, Mr. LIM, Mr. PARK, Mr. SHIN, Mr. NOH, Mr. KANG and Mr. KIM (Republic of Korea) took places at the Committee table.

2. Mr. HWANG (Republic of Korea) said that his country's accession to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in January 1995 reflected its commitment to the strengthening of domestic human rights protection and to international efforts to promote the cause of universal human rights. Dialogue with the Committee against Torture provided an opportunity to place Korea's past human rights record under objective scrutiny, a process that would help Korea to better fulfil its obligations under the Convention. All relevant agencies had participated in the preparation of the country report as the Government had sought to present a complete picture of the institutional framework relating to the prevention of torture in Korea. Korea's legal system was based on the principle of lex scripta and the report had placed emphasis on explaining the legal and institutional aspects of the State's systemic approach to the prevention of torture, rather than on specific practices.

3. The first constitutional principle providing the legal basis for human rights protection in the Republic of Korea was the strict prohibition of all forms of torture. Article 10 of the Constitution provided guarantees for human dignity and the right to pursue happiness, and imposed on the State the duty to safeguard the human rights of individuals. Article 37, paragraph 2, of the Constitution protected freedoms and rights even when restrictions were imposed by law for reasons of national security, the maintenance of law and order or public welfare. Protection against torture was further guaranteed by article 12, paragraph 2, of the Constitution. The second constitutional principle was that the provisions of the Convention should be applied directly in Korea as they had the same status as domestic law.

4. The Republic of Korea had maintained its reservations to articles 21 and 22 because it was concerned about the possibility of those provisions being misused to the detriment of the dignity of the State. Those concerns had persisted in view of the current situation on the Korean peninsular, which bore vestiges of its cold war legacy. Despite those reservations, there were no obstacles preventing victims of torture from seeking redress from international organizations. Korea's ratification of the Optional Protocol to the International Covenant on Civil and Political Rights allowed torture victims to file complaints with the Human Rights Committee. His Government therefore believed that reservations to the above-mentioned articles did not represent a derogation from the basic principles embodied in the Convention.

5. Institutional safeguards against torture and other cruel treatment could be grouped into three broad categories, namely, preventive mechanisms, remedial procedures and international cooperation, all of which conformed to standards and requirements under the Convention.

6. There had been a number of developments since the submission of Korea's initial report. Those developments included reforms to the Criminal Code and of the Penal Procedure Code, effective from 1 July 1996 and 1 January 1997 respectively. The amended Criminal Code aimed at improving the treatment of prisoners with a focus on their correctional education rather than punishment. To that end, probation systems and community service orders for adult criminals had been introduced. Under the new Penal Procedure Code, more stringent conditions were required for the arrest of suspects and there was a tendency towards the investigation of suspects without detention. The rights of the prosecutor and defence had also been strengthened by new provisions.

7. His Government was also planning to submit to the National Assembly a further amendment to the Criminal Code providing for the application of domestic laws to crimes committed by foreigners in a foreign State whenever those crimes were punishable under the treaties or other international agreements to which the Republic of Korea was a party. With the introduction of that "universality clause", Korea would have jurisdiction over all persons committing crimes of torture under the terms of the Convention, regardless of their nationality or of the place where the acts of torture had taken place. The proposed establishment of a National Human Rights Commission and the operation of the Korean Legal Aid Corporation, which offered free legal aid to disadvantaged groups and inhabitants of rural areas, were further beneficial advances.

8. In conclusion, he reiterated the Republic of Korea's irreversible commitment to democratic values. Much progress has been made in harmonizing Korea's judicial and legislative systems with international standards in the field of human rights since the inauguration of civilian government in February 1993. There was, however, significantly more to be accomplished. Under the watchful eye of the National Assembly, the media and active NGOs, Korea had become an open and pluralistic society.

9. Mr. ZUPANCIC (Country Rapporteur) thanked the delegation for the exhaustive report it had filed in fulfilment of article 19 of the Convention against Torture, and said that the granting of amnesty and the restoration of rights to over 44,000 citizens immediately following the inauguration of the civilian Government were laudable. True transition to full democratic and civilian rule would inevitably take a long time.

10. Among the positive aspects of changes in the Republic of Korea was the fact that since the late 1980s the authorities had adopted measures to prevent instances of torture. A large number of police officers had been prosecuted and tried for torture, political prisoners had earlier access to lawyers than previously, and in some cases the courts had ruled that confessions obtained under duress were inadmissible as evidence at trial.

11. Several concerns had been raised by NGO reports of abuses. The National Security Law contained vaguely defined provisions which had been used

arbitrarily for imprisonment. In 1995 alone, more than 200 people, including political activists and intellectuals, had been arrested under article 7 of the National Security Law. In that Law the Government of North Korea had been defined as an "anti-State" organization and persons who sympathized with that Government were liable to up to seven years' imprisonment. Many such prisoners were prisoners of conscience, punished for the non-violent exercise of their fundamental human rights. A number of prisoners of conscience and political prisoners claimed to have been tortured for the purpose of extracting a confession which was later used in court. Although article 12, paragraphs 2 and 7, of the Constitution of the Republic of Korea unequivocally prohibited the use of evidence obtained by such means, the courts' failure to apply the law strictly in the past had encouraged a culture wherein confession was regarded as the best evidence. The Republic of Korea was currently bound by article 15 of the Convention, which provided that statements made as a result of torture could not be invoked as evidence.

12. A further discrepancy existed between the provisions of article 125 of the Criminal Code and reality. In practice, there were few prosecutions of persons responsible for torture. Suspects had been held for interrogation for periods of up to 30 days before they had been charged, but although the Constitutional Court had found detention under those circumstances for a 50-day period to be an apparent violation of human rights, it had nevertheless ruled that the period had been constitutional on condition that it only applied to suspects held under articles 3, 4, 5, 6, 8 and 9 of the National Security Law. That ruling had had no effect on political prosecutions.

13. The three agencies responsible for the interrogation of suspects, the National Police Administration, the Agency for National Security and Planning, and the Military Security Command, had all been accused of resorting to the use of pressure for the purpose of obtaining confessions. Political prisoners held in custody in 1994 and 1995 had reported that the most frequently used methods of torture during interrogation had been sleep deprivation, threats and intimidation.

14. Acts of torture should be characterized as offences under the criminal law of States parties, but Korean legislation did not have specific provisions dealing directly with torture as defined in article 1 of the Convention. According to paragraph 106 of the report, the Criminal Code made a distinction between an act of violence and an act of cruelty. Even if the Convention was incorporated into the domestic law of a State party, it could not be used for purposes of prosecution in criminal matters. Criminal responsibility could not derive directly from the definition of torture contained in article 1 of the Convention because there was no sanction attached. The Committee usually asked for the definition of torture to be reflected in domestic legislation so that it could know how many specific incidences of torture there had been. He therefore asked why the crime of torture was not specifically covered by Korean domestic law.

15. He also wished to know whether attorneys were allowed to be present during the interrogation of suspects, and whether the right of suspects and detainees to counsel could be restricted at the discretion of the

investigative organs under the Penal Procedure Code. What legal consequences would follow from a court's conclusion that an act of torture had been permitted during detention?

16. In connection with paragraph 85 of the report, he asked whether public and military prosecutors were obliged to make a written report of their regular inspection of places of detention and, if so, who considered the report.

17. He also wished to know under what conditions was it possible for an individual to initiate a quasi-indictment procedure (para. 88 (a)). The Penal Procedure Code provided for that procedure in relation to "principal crimes". Did an act of inflicting mental suffering by a public official on an individual count as a "principal crime"?

18. When, for example, an individual lodged a constitutional complaint against a non-indictment decision by the public prosecutor concerning an act of torture, could the Constitutional Court order the public prosecutor to lodge an indictment? Did the National Security Law include a provision that the essential aspect of freedom or rights should not be violated in exceptional circumstances? Had there been any reports of cases of torture of suspects charged with violating that Law since the inauguration of the current Government?

19. In connection with paragraph 101 of the report, he asked whether in cases involving expulsion, return or extradition, the Korean authorities had to use the "substantial grounds for believing" test of article 3 of the Convention, or whether there were different tests in the Extradition Act and the Immigration Control Act, which spoke of humanitarian reasons in general.

20. In connection with paragraph 110 (b) of the report, he asked for a more specific explanation as to how an attempt to commit torture became punishable under criminal law.

21. For what reasons could the public prosecutor reject a demand for an investigation or prosecution procedure upon an information by an individual alleging that he had been the victim of torture? Could the public prosecutor reject the demand without a preliminary inquiry into the facts submitted by the individual?

22. In connection with paragraph 138 of the report, he asked whether the principle of discretionary indictment applied also to criminal acts of torture.

23. Were investigations into allegations of torture carried out by the investigative organs within three months of the date on which the suit was filed, as required under article 257 of the Penal Procedure Code? What was the statute of limitations on the crime of torture under article 125 of the Criminal Code in the Republic of Korea? Were there any instances in which criminal prosecution had been rendered impossible due to the expiry of the statute of limitations in suits filed for the crime of torture?

24. Had the rules and instructions dealing directly or indirectly with fundamental rights (especially the interrogation rules in "National Security Law cases") been reviewed since the Republic of Korea had acceded to the Convention? It was surprising that a suspect might be held for interrogation for 30 days or even 50 days without charge, when all were aware that torture was most likely to occur in those circumstances.

25. When disciplinary action was taken against prisoners what was the size of the cell in which they were held? Had there been any instances of prisoners being placed in "dark cells"?

26. Was education for the prevention of torture included in the training of medical personnel? What kind of education did prison doctors receive concerning activities to prevent torture?

27. In connection with paragraphs 182 to 186 of the report, he asked whether the public prosecutor acted ex officio in cases where an individual alleged the act of torture (i.e. without relying upon the victim's official complaint)? NGOs had stated that the prosecution investigated only formal complaints by torture victims. If that was so, it would constitute a lack of prompt and impartial examination of an alleged act of torture, as called for by article 12 of the Convention. Moreover, it was also reported that prosecution authorities were apparently unwilling to investigate reports of torture and ill-treatment. He would appreciate a response to those allegations.

28. In cases where a criminal investigation established that a public official had been guilty of an act of torture, was the judge empowered to award damages to the victim of the crime (para. 200 (a))?

29. There seemed to be an incompatibility between article 15 of the Convention and paragraph 205 of the report, but that was perhaps due to a misunderstanding on his part.

30. Lastly, he asked what medical redress measures were implemented by the Government of the Republic of Korea for torture victims suffering from the after-effects of torture, especially mental illness?

31. Mr. REGMI (Alternate Country Rapporteur) thanked the delegation of the Republic of Korea for an informative initial report submitted on time and in accordance with the Committee's general guidelines. However, the report should have been accompanied by copies of the Constitution and the principal legislative texts referred to in the report. He therefore requested the delegation to submit those documents.

32. Although the present Government of the Republic of Korea was paving the way towards democracy, the rule of law and an independent Judiciary, most of the laws of the previous authoritarian regime, under which human rights had been violated and victims often tortured, were still in operation. The Committee therefore hoped that the Government would take the necessary steps to bring the legal system into line with the Convention.

33. Although article 1 of the Convention contained an explicit definition of torture, he had been unable to find a similar definition in the report. It was of paramount importance to include in domestic law a definition of torture, together with provision for appropriate punishment for offenders and adequate compensation for victims.

34. As stated in paragraph 11 of the report, article 37, paragraph 2, of the Constitution of the Republic of Korea provided that the freedoms and rights of citizens might be restricted by law only when necessary for national security, the maintenance of law and order or public welfare. However, those provisions ran counter to article 2, paragraph 2, of the Convention.

35. He had learned from reliable sources that the Korean legal system allowed solitary confinement and permitted prisoners to be detained for 30 days under ordinary circumstances and 50 days under the National Security Law. The probability of detainees being tortured during such an extended period of detention was high. Moreover, he had been informed that the "dark cells" in which prisoners were kept were 2.48 square metres in area. Lack of space and unhygienic conditions predisposed the prisoners to many illnesses. He therefore requested the Government of the Republic of Korea to amend the relevant laws to bring them into conformity with article 2 of the Convention. He hoped that that could be done by the time the second periodic report was submitted.

36. Paragraph 105 of the report stated that the Criminal Code of the Republic of Korea did not have a specific provision which dealt directly with torture. However, in accordance with article 4 of the Convention, States parties were expected to ensure that all acts of torture were offences under their criminal law. It was therefore important expressly to declare torture an offence under criminal law and make such offences punishable by appropriate penalties.

37. The Committee was pleased to note that the Government was fulfilling the provisions of article 9 of the Convention concerning mutual judicial assistance and that it had relevant treaties with Australia, Canada, France and the United States. That was highly commendable.

38. In connection with article 10 of the Convention, he observed that details were given in paragraphs 158 to 165 of the report concerning the education of the public, whereas article 10 of the Convention referred more specifically to the need for each State party to ensure that education and information regarding the prohibition against torture were fully included in the training of, inter alia, law enforcement personnel, civil or military, medical personnel and public officials. He therefore requested the Government to arrange for the compulsory training of all such personnel and to provide information in particular on the training of medical staff regarding the prohibition against torture.

39. Paragraphs 173 to 180 of the report, referring to article 11 of the Convention, should have given details of the systematic review of interrogation rules and arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment with a view to preventing cases of torture. He therefore requested additional information

concerning the paramount rights of defence; the right of detainees to be told the exact reason for their being held in custody, to consult a lawyer, to see a doctor of their own choice and to inform their next of kin of their whereabouts.

40. He wished to know whether there was a provision for incommunicado detention in the Korean legal system and, if so, for how long and under what conditions.

41. He asked how the provisions of article 12, which required a prompt and impartial investigation wherever there was reasonable ground to believe that an act of torture had been committed in any territory under the jurisdiction of the State party, could be met when the Korean legal system allowed 30 days of detention under ordinary jurisdiction and 50 days under the National Security Law.

42. The Special Rapporteur on freedom of expression had found that all the human rights treaty bodies were recommending the repeal of the Korean National Security Law and the consideration of other provisions consistent with the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. In his own view, the Government of the Republic of Korea would do well to repeal that law, since most acts of torture were committed during pre-trial detention and in police custody. When the complaints of victims of torture had to be heard by the police authorities themselves, the system might be biased and complainants intimidated. He asked who was the competent final authority on the dispensation of prompt and impartial redress for torture victims.

43. With respect to article 14, he asked what was the maximum compensation payable to a victim and whether there was any provision for the rehabilitation of torture victims.

44. Since all were agreed that the death penalty was a cruel, inhuman and degrading punishment he requested the Government of the Republic of Korea to abolish it.

45. He had been informed by many NGOs, including Amnesty International and the Korean Human Rights Network, of the numerous victims of torture, including a professor of history, Park Chung Hee, arrested under the National Security Law and subjected to physical and mental torture, deprived of sleep, beaten and threatened, a pregnant woman, Koh Ae Soon, who had been denied medical care in prison, and Yu Chong Sik, arrested in March 1975 and sentenced to life imprisonment under the National Security Law. There were many other names on the list sent to him, all of whom had been charged and convicted under the National Security Law. He requested the delegation to look into those cases and give further details to the Committee.

46. Mr. SORENSEN said he was pleased that the Government of the Republic of Korea had been making efforts to inform the population about the contents of

the Convention (para. 159 of the report). However, education and training were also needed, and he asked how such training was conducted.

47. In its discussion of article 10 of the Convention, the report of the Republic of Korea had not mentioned doctors at all, yet they had a key role to play in defending human rights and eradicating torture. They were the ones who saw persons who had been ill-treated; they could also produce statistics and inform the authorities, and give advice about the health of detainees and prisoners. He called for the introduction of a preventive medical examination, which should be carried out as soon as a person arrived in prison. Not only would it protect the prisoner, but it would also be valuable to prison staff, who then could not be blamed if it was established that the prisoner already showed signs of ill-treatment upon arrival. It might also be worth considering whether to allow doctors to conduct a quick medical examination in police stations every morning. That would also serve as a preventive measure.

48. The Manual for Police Affairs, to which reference was made in paragraph 169 (d) of the report, although important, failed to include four basic safeguards: the right to inform next-of-kin of an arrest; the right to have access to a lawyer; the right to see a neutral doctor; and the right to be informed of one's rights.

49. He would also like to know how information on combating torture had been included in the curriculum for medical students. How were forensic experts and psychiatrists kept informed of the issue? Was it possible for doctors at risk, i.e. in police stations, prisons and military facilities, to insist on respecting ethical rules even if that ran counter to the wishes of the authorities? Were they protected in such cases?

50. Concerning article 14 of the Convention, did the Republic of Korea have a rehabilitation centre for torture victims and, if not, would it consider opening and supporting one?

51. Mr. GONZALEZ POBLETE asked who was meant, in paragraph 6 of the report, by the statement that government pardons had freed most inmates "with the exception of those who could not be tolerated under the newly established liberal democratic system". Furthermore, did the amnesty include officials of the authoritarian regime who had been involved in violations of human rights?

52. With regard to paragraph 21 of the report, he did not see how the special situation between the Republic of Korea and North Korea had anything to do with recognizing the right of citizens to submit communications to the Committee.

53. In connection with paragraph 33, he asked whether acts of torture were regarded as specifically military offences, in which case they would fall under the jurisdiction of the military courts, or whether they were considered to be ordinary offences, in which case they would be judged by the ordinary courts. He also sought further information on the powers of the military

courts. How were military prosecutors and judges appointed and by whom? And how was it ensured that they could investigate and deliver decisions independently?

54. Ms. ILIOPOULOS-STRANGAS said that she had difficulty understanding the reservation expressed by the Republic of Korea concerning articles 21 and 22 of the Convention to the effect that they might be detrimental to the dignity and credibility of the nation. How could the right to submit a communication to the Committee affect the dignity of the Republic of Korea? As to article 21, she noted that North Korea had not even signed the Convention and that consequently there was no danger of its submitting a communication to the Committee in which it claimed that the Republic of Korea was not fulfilling its obligations under the Convention.

55. Turning to paragraph 32, she sought clarification on how the judges of the Constitutional Court were appointed and how the independence of the three judges nominated by the Chief Justice was ensured. Also, how was the Chief Justice appointed? If that person was appointed by the President, how was his independence guaranteed?

56. Paragraph 102 (c) stated that foreigners could not be repatriated in certain cases for humanitarian reasons. She pointed out that it was an obligation under the Convention, and not just a decision on humanitarian grounds, to refrain from repatriating foreigners in cases in which there were substantial grounds for believing that they were in danger of being subjected to torture in their country of origin. Domestic legislation must take that into consideration.

57. She would also like to learn more about the status of the Convention in the domestic legal system of the Republic of Korea. When a law was passed that was at variance with the Convention, which took precedence?

58. Mr. YAKOVLEV said that given the recent welcome adoption of a new Penal Procedure Code, there no longer seemed to be any need for the National Security Law. By making it a crime to fail to report knowledge of any violation of its provisions, the National Security Law was in breach of the Criminal Code and the Penal Procedure Code, which only punished the aiding and abetting of crime.

59. Mr. BURNS agreed. He was surprised to find that it was a crime to fail to inform the authorities: that was reminiscent of certain legislation under authoritarian regimes.

60. He would like to know what the statute of limitations stipulated in respect of crimes of torture. Did it prevent the State from prosecuting acts of torture committed under the military regime? Was that the reason why there had been no prosecution of such acts? Also, what was the civil limitation period? If it was too short, it might be ineffective, because it would then be difficult for torture victims to apply for compensation.

61. He sought information on the death penalty, which was still in effect in the Republic of Korea. What crimes were subject to the death penalty? Was the death penalty applied in public or in private, and what method was used? What was the nature of possible appeals? Could the delegation provide data on the number of persons executed over the past three years and for which crimes? Did executive clemency exist, and how often had it been exercised?

62. The CHAIRMAN asked whether the Republic of Korea contributed to the United Nations Voluntary Fund for Victims of Torture. If not, he hoped that it would consider doing so.

The public part of the meeting rose at 12.20 p.m.